

H B

2 7 8

COMMITTEE REPORT

4/4

HOUSE

JUDICIARY

(7)

FURTHER: FINANCE

2/3/85

Date:

Apr. 2, 1985

The Committee on LABOR & COMMERCE has had HB 273

"An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[x] replace with CS for HN 278 (LVC) [x] same title

and recommends \_\_\_\_\_ [ ] new title

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note  
[x] reports it back without recommendation [x] Zero Fiscal Note Attached

[ ] referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN



## The 700% Solution—A Billion Dollar Ripoff

By Paul J. Andrews

*(A commentary in the April 1980 edition of Government Executive addressed the issue of the high cost of architect-engineer services in Federal contracts. The following opinion/commentary is an update on that same issue and was submitted by a long-time (1946-1973) Federal employee who is now retired from Government service but retains a strong interest in Federal expenditures. An attorney, Mr. Andrews spent much of his Federal service in the areas of supply, contracts, claims and compliance.)*

One of the obvious ways to reduce the federal deficit is to reduce the outlay of funds for federal procurement; and an important procurement technique to reduce prices is by competitive bidding or negotiation. On August 11, 1983, President Reagan called on the heads of departments and agencies to increase price competition in the \$160 billion spent annually in federal procurement and restrict the use of noncompetitive procurement. As a part of its deficit reduction package, both houses of Congress drafted a "competition in contracting" bill (S. 338 and H.R. 5184).

The one exception, in the latter bill, to more "fair and open competition" is the procedures in the Brooks Act (sponsored by Rep. Jack Brooks and passed on October 27, 1972), which forbids price competition for architect-engineer (A/E) services. A/E fees in federal procurement total about \$5 billion annually. In the "Deficit Reduction Act of 1984" (P.L. 98-369, enacted July 18, 1984), which combined the two bills, the Federal Property Act was amended to provide (sec. 309 (b)) that—"the term 'competitive procedures' means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such terms also includes—

(1) procurement of architectural or engineering services conducted in accordance with title IX of this Act (40 U.S.C. 541 et seq) [the Brooks Act]".

On April 25, 1978, antitrust action against the A/E industry (National Society of Professional Engineers v. U.S.) culminated in the Supreme Court's decision that the traditional method of selecting A/E's without comparison of prices

was a "frontal assault on the basic policy" of the Sherman Anti-trust Act. But by then the A/E code of ethics prohibiting comparison of prices had been written into law (the Brooks Act, dated October 27, 1972).

The current NSPE Code of Ethics (as revised, July 1981) rescinds section 11(c) of its previous code, recognizing the Supreme Court decision, and permits price negotiation for A/E services. The private client may now compare prices offered by competing A/E's; but the federal government client is forbidden by the Brooks Act from making price comparisons. The new NSPE Code also notes that "Engineers and firms may individually refuse to bid for engineering services. Clients are not required to seek bids for engineering services . . . State registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect." As we shall observe later, the absence of price comparison results in a 600 to 700 per cent price spread in the cost of A/E services. In other words, the Brooks Act alone insures that A/E services which could be obtained for \$50,000, will cost the federal government as much as \$350,000.

A survey of the largest construction firms in the east revealed a definite move toward price comparison in the A/E selection process. Joe Wood of Marriott Corporation said that for the design of hotels and facilities around the world they ask for A/E design proposals with prices, then select the proposals in the lower half of the price range and negotiate with the best qualified A/E. Alan Brangman said Oliver T. Carr Co. was paying time and service rates for A/E services but found the costs so high that the project managers are now going into the market place to expand the pool of eligible A/E's and to negotiate lump sum prices with all A/E's qualified for the particular design job. Steve Hayes, Project Manager for the Washington-Baltimore area for Cabot and Forbes, who construct multi-story office buildings, said they use Skidmore, Owings and Merrill as the A/E for their largest buildings; but in suburban areas (for designs of smaller facilities) a feasibility design is developed, a pool of

qualified A/E's is selected and price is negotiated with all of them. The consensus was that price comparison for A/E services is the definite trend—in order to reduce costs of design work and continue to obtain highly qualified A/E's.

In its December 1972 report, the Commission on Government Procurement recommended price competition as a "non-dominant factor" in selections of A/E's. Congressman Brooks, in the ensuing 12 years has never sought review of the Brooks Act, although for most of these years he has been in a prime position, as Chairman of the House Government Operations Committee, to do so. He has repeatedly stated that the Act calls for "fair and reasonable" prices and if administration of A/E procurement fails to curb excessive profits, it is not his concern. Section 2753 of the recently enacted Deficit Reduction Act of 1984 finally calls for a study of all factors in the procurement with recommendations from the Office of Federal Procurement Policy (OFPP), where the survey will be conducted.

In August, 1983, the Inspector General of the Department of Transportation published an investigative report in which he reviewed 102 A/E grant-funded contracts and concluded that there had been a loss of tens of millions of dollars to the American taxpayer. Fifty three percent of the contracts were entered into without the benefit of adequate cost estimates and analyses of A/E costs and 68 percent of the contracts were not sufficiently documented to show that reasonable prices were obtained. Ten of the contracts showed a price spread of 7 to 733 percent for the same services. Frank Musica, Washington Counsel for the American Society of Civil Engineers, explained that price spreads of \$50,000 to \$300,000 (600 percent) were not unusual for A/E proposals on the same project because the federal agencies were unable to define adequately the scope of work. The anomaly in this assertion is that federal agencies also claim they cannot define adequately the scope of work for a particular project for the purpose of price comparison among the three best qualified A/E's selected. Having said that, the agency immediately enters into a contract with the best qualified A/E in which

scope of work is defined sufficiently to measure the A/E's performance.

The significance of the price spread is that so much of A/E design work is repetitive (such as rooms and other space units in a building) that prices paid in the past become the basis for estimates by the government or the client for future design projects. Prices near the top of the 600 to 700 percent spread, therefore, create a plateau estimated price for future projects. If the three best qualified A/Es are permitted to offer prices for comparison by the client, and the plateau price offered by the best qualified A/E is at the top of the 700 spread, the prices offered by the other two best qualified A/Es could introduce competition at the 300 percent and 100 percent level. The A/E industry price fixing rate schedules, of course, keep prices at the 700 level. And if over 98% of A/E contracts are awarded by the federal government to the best qualified A/E at the 700 level the inflationary trend in prices is obvious. Notwithstanding this inflationary trend, in the 12 years that the Brooks Act has been in effect, no effort has been made by the Federal Government to survey the prices for A/E services.

The absence of requirements for competitive price negotiation in the A/E selection process is the crux of the problem of excessive profits. The DOT audit found that "in 36 percent of the 102 A/E contracts reviewed, available evidence indicated that A/E firm proposals were apparently accepted without analysis or efforts to negotiate reasonable prices. It appeared that these grantees did not have either the capability or the incentive to conduct meaningful (price) negotiations with the A/E firms."

From the time the Brooks Act was enacted, price negotiation has been a charade. The A/E selected as best qualified prescribes the industry fixed price for

the services required. The federal or grantee client must accept this price or lose that A/E. The client knows if he goes to the other selected A/Es he will be offered the same industry rates on a take-it or leave-it basis. So, why lose the best qualified A/E?

Statistics bear this out. In 1979, the Department of Defense reported to a House Committee that "It is estimated by the military that less than two percent of contract negotiations are formally terminated with the top-ranked (A/E) firm and negotiations undertaken with the second-most-qualified firm, and almost non-existent when negotiations are undertaken with the third or lesser-ranked firm". In the Military Construction Program in fiscal years 1979, 1980 and 1981 the Navy and Army awarded 480 A/E contracts—474 to the best-qualified firm and 6 to the second (or 98.7 percent to the best-qualified firms). Efforts by the Corps of Engineers to test competitive pricing for A/E services were thwarted by the Department of Defense and Congressional committees on the ground that such tests were forbidden by the Brooks Act.

The Comptroller General continues to issue reports favoring a form of price-competition for A/E services but refrains from raising the subject when testifying on procurement legislation. However, in presenting the views of the Department of Justice on the OFPP draft "Proposal for a Uniform Federal Procurement System", dated February 12, 1982, Assistant Attorney General Robert A. McConnell, in his letter of February 20, 1982, stated that although Justice supported the pro-competitive policy objectives of the proposal, "... we strongly believe it to be deficient in not requiring competitive procurement of architect and engineering services." Justice recommended repeal of the Brooks Act and elimination of "the

current anticompetitive restraints upon A/E services procurement." Apparently in conformance with the Administration's pro-industry policy, the OFPP ignored the "strong" advice of Justice with respect to A/E procurement reform when it sent its final System proposal to the Congress.

The primary factors in the selection process for other professional services is the professional competence of those who will do the work and the relative merits of proposals for the end products. The fee to be charged is not a dominant factor but price comparison is required. It is this latter factor which is missing under the Brooks Act.

Professionals who perform work similar to that performed by A/Es have sought to be included under the Brooks Act. Appeals to the Comptroller General of the United States by the Association of Soil and Foundation Engineers, and by other engineering firms referenced in that opinion, to be exempt from price competition for services their members performed that were related to A/E services, were denied because the Brooks Act procedures are strictly limited to such services "when performed by A/E firms." However, the surveyors and mappers have prevailed; 97 Stat. 311 adds their services to the Brooks Act. This was accomplished by a floor amendment introduced by Senator Charles Percy to the supplemental appropriations act of 1983 (P.L. 98-63). Other professionals (real estate appraisers, lawyers and others) have sought, over the years, to get aboard the gravy train that has profited the A/Es so much.

With the support of the Brooks Act, sole source procurement of A/E services at prices fixed by the industry have lulled state and federal contracting and administrative officials into a state of euphoric disregard of all sound contracting principles. Money is poured into A/E projects with no evaluation of cost or accountability required. The rationale is that the ultimate cost of the design concept, whatever it is, will be justified in the construction to which it is applied. The logical control is to be found in some kind of price competition. The A/E lobby in Congress is betting its money against such a retreat from the status quo.

It is encouraging that the Deficit Reduction Act of 1984, in its final provision, calls for a study of procurement of professional services, including A/E services. The report on the legislation (House Report 98-861) proposes a system in which all qualified persons be encouraged to submit a competitive proposal in response to each solicitation for services "and in which the award is made to the bidder on the list who can perform the service for the lowest over-all cost." This is the light at the end of the tunnel. May this commentary contribute to the study of procurement of A/E services.

**LOW COST LARGEST SELECTION TEMPEST PRODUCTS**

<p>All Types of TEMPEST PPL Products Sought For Display and Sale at THE TEMPEST STORE</p> <p><b>ITC PC AT-I</b> Resigned to meet NACSIM 5100A From <b>\$ 6,990</b></p> <p><b>ITC PC XT-I</b> Accredited PPL From <b>\$ 5,358</b></p> <p><b>TEMPEST OPTIONS</b> Accredited PPL</p> <ul style="list-style-type: none"> <li>• 1 or 2 IBM 320KB Diskette Drives</li> <li>• 1 or 2 Half-Height 5MB Removable Winchester Disk</li> <li>• 1 or 2 Half-Height 360KB Diskette Drives</li> <li>• 1 10MB Floppy Drive</li> <li>• Math CoProcessor</li> <li>• Memory Expansion</li> <li>• High Resolution Monochrome Graphics</li> <li>• AST MegaPlus</li> <li>• Emulation 1:1K-UP</li> <li>• RAM Up to 840K</li> </ul> <p><b>ITC PC-T</b> Resigned to meet NACSIM 5100A From <b>\$ 3,990</b></p> <p><b>ITC 20T Printer</b> Accredited PPL From <b>\$ 4,935</b></p> <ul style="list-style-type: none"> <li>• High Speed/Multifunction/Le or Quality/Draft/Graphics/Typesetting</li> <li>• Interfaces for Wang, Delta Jet, and IBM TEMPEST PCs</li> </ul> <p><b>ITC 2T Tablet OCR</b> Accredited PPL From <b>\$12,331</b></p>	<p><b>SPECIAL 10MB Disk Upgrade</b> for UNTEMPEST IBM PC's Installed \$599</p> <p>All Types of Software Immediate Delivery of Off-the-Shelf Products</p>
--	--

**GS-00K-8401S-8045**  
For Most Items

**THE TEMPEST STORE**  
Owned by International Technology Corporation  
CALL Irene Chaney at 703-893-5149

By Appointment Only  
Identification Required  
Sales by Purchase Order Only  
No Cash Walk-ins

6801 Elm Street  
P.O. Box 6070  
McLean, VA 22106

the prospective client to compare services on the basis of price prior selection, and it presumes that the contract will go to the qualified firm submitting the lowest price.<sup>1</sup> Of the 29 states which have statutes on A/E selection, 2<sup>1</sup> are similar to the Brooks bill and the Model Code; twelve specifically exempt A/E selection from competitive bidding; two prohibit bidding for A/E services by law; one permits agencies to request price proposals at their discretion (Georgia); and one requires price proposals (Maryland). Table 1 summarizes these state statutes.

TABLE 1

SUMMARY OF STATE LAWS			
<u>States which prohibit competitive bidding for A/E services in Law:</u>			
Tennessee		Texas	
<u>States which exempt A/E services from general bidding requirements:</u>			
California		New Jersey	
District of Columbia		New York - by state	
Hawaii		comptroller's opinion 12	
Illinois		Ohio	
Kentucky		Oklahoma	
Mississippi-by attorney		Pennsylvania	
general's ruling		Wyoming	
<u>States calling for selection based on qualification:</u>			
(with procedure requiring ranking of firms, negotiation on scope of project and fee with the top firm. If no contract can be reached, negotiations are terminated and taken up with the second ranked firm, etc.)			
California	(1973)	Nebraska	(1978)
Connecticut	(1979)	New Hampshire	(1973)
Colorado	(1979)	New York State	(1980)
Delaware	(1976)	Oklahoma	(1974)
Florida	(1973)	Pennsylvania-building	(1975)
Kansas As and Es	(1977)	construction offices	
Kentucky	(1978)	South Carolina	(1974)
Louisiana	(1975)	Texas	(1971)
Maine	(1979)	Utah	(1980)
Massachusetts	(1975)	Virginia	(1980)
Minnesota	(1975)	Washington	(1981)

<sup>1</sup>"Report of the GSA Special Study Committee on the Selection of Architects and Engineers," Part: IV, Appendix F, p. 1 (June 1974).

# Appendix A

## PUBLIC LAW 92-582; 92ND CONGRESS, H. R. 12807; OCTOBER 27, 1972

### AN ACT

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title<sup>1</sup>:

#### "TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

##### "Definitions

Sec. 901. As used in this title—

"(1) The term firm means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term agency head means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term architectural and engineering services includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.<sup>2</sup>

##### "Policy

Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

*Requests for data on architectural and engineering services*

"Sec. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each

proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

"*Negotiation of contracts for architectural and engineering services*

"Sec. 904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.<sup>3</sup>

Approved October 27, 1972.

<sup>1</sup>Architects and engineers: Federal selection policy, establishment 63 Stat. 377, 82 Stat. 1104.

<sup>2</sup>86 Stat. 1278.

<sup>3</sup>86 Stat. 1279.

#### LEGISLATIVE HISTORY

HOUSE REPORT No. 92-1188 (Comm. on Government Operations)

SENATE REPORT No. 92-1219 (Comm. on Government Operations)

CONGRESSIONAL RECORD Vol. 118 (1972) July 26 considered and passed House; Oct. 24, considered and passed Senate.

# Memo

Newsletter of The American Institute of Architects #682 January 23, 1985

RECEIVED

JAN 28 1985

Inch-Ritter-Farrest Architects

San Francisco Convention & Visitors Bureau

## Convention '85 Will Show How To Integrate Design Trends Into 'Value Architecture'

How can architects apply the newest design techniques to create quality facilities for the elderly, energy-efficient "smart" new buildings, space-efficient interiors and other projects that produce profits for their clients and themselves?

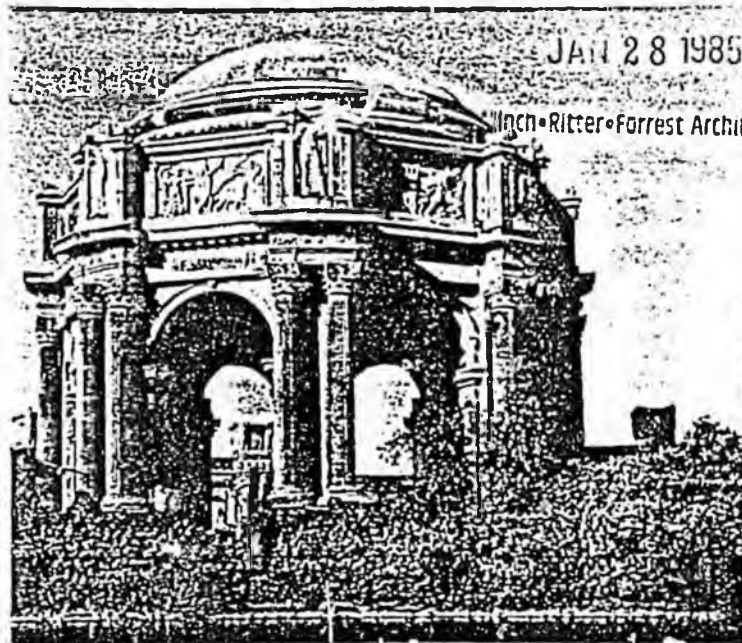
The 1985 AIA National Convention in San Francisco, June 9-12, will feature 10 information-packed hours of special design programs to help architects integrate new techniques into the various facets of "value architecture."

The "Value Architecture" convention's four professional interest programs, covering design for aging, research and design, interior design and the 1985 AIA design awards, will complement a wide range of professional development seminars, small-group consultations and theme programs. (See Memos #680 and #681.)

The workshop on "Design for Aging" will review the special needs, information sources and design guidelines available for all environments—from independent living communities to health, recreational, cultural and extended-nursing-care facilities—for the fastest growing segment of America's population.

This comprehensive program will be led by former AIA Board member Samuel A. (Pete) Anderson III of Richmond and Martin H. Cohen, FAIA, New York City.

Another in-depth program will present highlights of the Institute's "Research and Design '85"



San Francisco's Palace of Fine Arts (1915) by Bernard Maybeck

conference to be held this March in Los Angeles, where architects are expected to explore state-of-the-art findings from architectural research and technology.

This workshop will emphasize the application of new design and management tools—especially computers—to energy-conscious design, life safety and codes, building redesign, design of specialized facilities and environmental needs.

Moderated by Earle W. Kennett of the AIA Foundation's research department, the research and design program will feature selected papers from the March conference.

Interior design's value as a project-enhancing service to clients will be addressed in the "Designing Value Interiors" workshop. Participants will examine how interior design has emerged as one of the fastest-growing dimensions of the design profession and how it can become one of the most profitable services of architecture firms.

The interior design workshop will be led by Michael Brill, president of the Buffalo Organization for Social and Technological Innovation.

The final design program will include a series of panel discussions of AIA Honor Award-winning projects for 1985—from perspectives of both the architect and the client. Panelists will discuss how quality design adds "value"—monetary and otherwise—to an architectural project.

Essex (Conn.) architect Mark Simon will moderate these discussions.

"This year's design programs offer a unique and valuable opportunity for architects to learn more about design excellence and the tools for creating it," explained 1985 convention chairman Joseph Monticciolo, FAIA.

## Qualifications Or Price: How Should States Select A/Es for Public Projects?

Which is more cost-effective for state governments: Selecting architects and engineers primarily on the basis of qualifications or on the basis of their fees?

This question is the focus of a recent AIA study comparing the experience of Maryland, which selects architects and engineers on the basis of price and other qualifications, and Florida, which emphasizes technical qualifications in the selection system.

The AIA-supported "Brooks Act" approach to granting public building contracts, specifying that A/Es be selected on their qualifications subject to negotiation of fair and reasonable compensation, is used by most localities; the federal government and the majority of state governments, including Florida.

Maryland, however, has advocated its selection process as more cost-effective than the traditional "Brooks Act" approach, thus prompting the AIA to include Maryland in the study.

Florida was selected for comparison because, until price enters the process, its A/E selection is similar to Maryland's.

The study concludes that Maryland's A/E selection process "is significantly more time-consuming and expensive than Florida's," according to AIA Board member David E. Lawson, chairman of the AIA A/E Selection Consulting Group.

In Maryland, total costs of the A/E portion of the capital construction process average 13 percent of estimated construction costs; but in Florida they average only 6.8 percent. While A/E fees



are lower in Maryland than in Florida, "the added costs of the Maryland process far outweigh the savings in A/E fees," reports the study.

These added costs are in part the result of a larger administrative staff and budget necessary for preparing detailed programs on which architects and engineers can submit price proposals. These program descriptions also take additional preparation and review time, resulting in costly delays.

While Maryland requires the consideration of both price and technical competence when awarding contracts, the study finds that price is becoming the dominant factor in the system.

Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83 percent) went to the firms with the lowest price proposals.

Although both state governments are pleased with their A/E selection procedures and the quality of the buildings that result, A/E's in Maryland are resentful of its system.

"Most A/E's who design state projects in Maryland dislike the system, which they feel rewards them inadequately," reports the study.

The Maryland system, which requires competing firms to submit elaborate technical proposals accompanied by fixed prices, results in extraordinary costs to firms that compete but are not awarded contracts. These costs are eventually passed on to consumers of A/E services, according to the study.

Contact: Nancy Somerville, AIA government affairs, (202) 626-7386.

## New AIA/SC Specifications For High-Tech Buildings Can Ease Design Problems

To help architects adapt to rapidly changing construction technology, the AIA Service Corporation is expanding its MASTER-SPEC system by developing specifications for a new generation of highly automated buildings.

Specifications for these so-called "intelligent" buildings are designed to alleviate problems for design professionals who have limited experience working with high-technology construction systems.

Entering the marketplace in the wake of the AT&T divestiture and the explosion of computer technology, "intelligent" systems use a network of sensors to determine a building's environment, and computers and microcomputers to adjust building controls to ever-changing conditions.

MASTERSPEC will now emphasize transmission media, telecommunications systems, lighting, building controls, signaling, energy-management systems and building automation.

Specifically, new building construction technologies for transmitting audio, video and data signals may significantly affect architectural designs.

These signals, generally transmitted through electronic cables, can now be sent with fiber optics—a much smaller medium. Use of fiber optics can dramatically alter the amount and type of space necessary to accommodate transmission equipment in new buildings.

Contact: William Aird, AIA SC, (202) 626-7371.

## 6 'Energy in Architecture' Workshops Are Scheduled for Early 1985

Architects can continue to sharpen their knowledge and skills in energy-conscious design by taking advantage of the Institute's comprehensive "Energy in Architecture" workshops this year.

The schedule for this winter and spring:

—"Microcomputer-Based Energy Analysis (level 4a), Feb. 28, Moraine Valley Community College, Argonne, Ill.;

—"Energy in Design: "Techniques" (level 2), Feb. 28-March 1, AIA Building, Washington, D.C.;

—"Energy-Conscious Redesign" (level 3c), March 21-22, Kona Kai Club, San Diego;

—"Energy in Design: Process" (level 3a), March 28-29, AIA Building, Washington, D.C.;

—"Microcomputer" (4a), April 15, San Diego;

—"Redesign" (3c), April 25-26, AIA Building, Washington, D.C.

Registration fees will remain the same for AIA members in 1985 but will increase for non-members.

Contact: Brenda Henderson, AIA professional development, (202) 626-7353.

## Design Firm Management To Be Examined at D.C. Conference March 13-15

Management techniques and specifying strategies to prepare design professionals for 21st century challenges will be explored at the first Consulting Engineers Exposition and Management Conference, March 13-15 at the Washington (D.C.) Convention Center.

The comprehensive conference, cosponsored by ACEC and Consulting Engineer magazine will identify new markets for design firms and examine how firms should be structured to tap these markets.

More than 2,500 design professionals from across the nation are expected to attend the conference, which will feature 60 management sessions, over 75 technical seminars and an extensive exposition showcasing companies that offer products and services for design professionals.

Carrying the theme "On Track to the 21st Century . . . Trends, Traps and Targets," the three-day conference will offer a four-track program with seminars on management development, vendor/specifier relations, trends in engineering practice and methodologies for internal practice.

General session speakers will include Marvin Cetron, the futurist who addressed the 1984 AIA National Convention; Lee Iacocca, chairman of Chrysler's board; Paul Goldberger, New York Times architecture critic; Abel Wolman, educator and author of *The Livable City*, and Samuel C. Florman, a construction company executive. Contact: Linda Oswald, Slack Inc., (609) 848-2147.

Introduced: 3/1/85  
Referred: Community & Regional  
Affairs and Finance

1 IN THE SENATE

BY STURGULEWSKI AND RODEY

2

SENATE BILL NO. 204

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to contracts for architectural,  
7 engineering, and land surveying services; and provid-  
8 ing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 36.98 is amended by adding a new section to read:

11 Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING  
12 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and  
13 36.98.040, a state agency shall negotiate a contract with the most  
14 qualified and suitable firm or person of demonstrated competence for  
15 architectural, engineering, or land surveying services. The state  
16 agency shall award a contract for those services at fair and  
17 reasonable compensation as determined by the state agency, after  
18 consideration of the estimated value of the services to be rendered,  
19 and the scope, complexity, and professional nature of the services.

20 (b) If negotiations with the most qualified and suitable firm or  
21 person under (a) of this section are not successful, the state agency  
22 shall negotiate a contract with other qualified persons or firms of  
23 demonstrated competence, in order of public ranking. The state agency  
24 may reject all or part of a proposal.

25 (c) This section does not apply to contracts awarded in a situa-  
26 tion of public necessity if the person responsible for execution of  
27 the contract on behalf of the state agency certifies in writing that a  
28 situation of public necessity exists.

29 (d) In this section "state agency" has the meaning given in

1 AS 36.98.080(5), but also includes political subdivisions of the state  
2 when the political subdivision seeks architectural, engineering, or  
3 land surveying services for a project that is funded entirely or  
4 partially by state funds.

5 \* Sec. 2. This Act applies to requests for bids or proposals for archi-  
6 tectural, engineering, and land surveying services issued after the effec-  
7 tive date of this Act.

8 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.--  
9 10.070(c).

10



## Dept. of Transportation & Public Facilities

# Position Paper

**BILL NO:** HB 278

**APPROVED:** R. J. Knapp  
Commissioner 

**TITLE:** An Act Relating to Contracts for  
Architectural, Engineering, and Land  
Surveying Services

**DATE:**

The Department of Transportation and Public Facilities acknowledges the merits of the argument that low bid selection for professional design services could lead to undesirable cost and operating efficiency problems with the facilities constructed as a result of these designs. In certain cases, the practice of bidding could put the public in a position of paying for facilities which are not in the best interest of the public even though substantial sums appear to have been "saved" during the design phase. The Department supports the concept of flexible selection criteria enabling the Department to adjust the number and weighting of various factors for selection, including cost to design. There remain numerous classes of design professional contracts wherein price consideration can continue to be of value to the state (architectural reviews for code compliance, projects which have a well defined design and construction scope, and various sorts of consulting services).

The Department believes that the major intent of the proposed legislation could be accomplished, and our concerns alleviated, if the language of the bill included a limitation on the extent to which price could be considered for design oriented contracts. The State wishes to include price as a factor in selecting AE&LS' services when, in the judgment of the State, the scope, nature, and amount of services required are sufficiently defined so as to reasonably enable proposing firms or individuals to compete with a substantially equal understanding and/or interpretation of the services required.

The Department suggests adding the following language to Section 36.98.043 of SB 204:

(d) Notwithstanding any other provisions of this section, the State may include price as a factor in selecting AE&LS' services when, in the judgment of the State, the scope, nature, and amount of services required are sufficiently defined so as to reasonably enable proposing firms or individuals to compete with a substantially equal understanding and/or interpretation of the services required. [In order to include price as a factor in selection, the State must have at least one person involved in the evaluation of proposals who is registered in the State of Alaska in the primary Architectural, Engineering or Land Surveying discipline of the contract.]

HB 278 File Contents

March 20, 1985 Wednesday

- 1) Bill Summary -- Legislative Reporting Service
  - 2) Overview -- R. Poppe, Committee Staff
  - 3) Alaska Statutes 36.98
  - 4) Fiscal Note -- Dept. of Administration
  - 5) Position Statement -- Dept. of Administration
  - 6) Supplemental Materials supplied by a representative of the Alaska Chapter of the American Institute of Architects
    - a) Report of the federal GSA Special Study Committee on the Selection of Architects and Engineers (June, 1974)
    - b) Article: "Why not contract for architectural services on a competitive-bid basis?"
    - c) Summary of Laws of Other States  
Federal Public Law 92-582, October 27, 1972  
Memo: Newsletter of the AIA, Jan. 23, 1985 on "Qualifications or Price: How Should States Select A/Es for Public Projects?"
  - 7) Copy of SB 204 by Sturgelewski
- 

March 21, 1985

- 8) Fiscal Note -- Department of Transportation
- 9) Fiscal Analysis -- DOT
- 10) Position Statement with Proposed Amendment -- DOT

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

FISCAL DETAIL

Bill/Resolution No.: HB 278  
 Title: An Act Relating to Contracting for Arch., Engr., & Land Survey Services  
 Sponsor: Koponen, Sund, et al  
 Requestor: \_\_\_\_\_  
 Date of Request: 3/18/85

Agency Affected: DOT&PF, DEC, DNR, DOA  
 Program Category Affected: Design, Construct Land Management, General Services  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary

See Attachment

Prepared By: John Simpson  Phone: 465-2951  
 Division: Standards & Technical Services Date: 3/19/85  
 Approved by Commissioner: Wain Spauld Date: 3/21/85  
 Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Analysis - HB 278

This bill specifies the basis on which the state would negotiate and award contracts for architectural, engineering and land surveying services.

If it is not possible to estimate the fiscal impact of the bill on state agencies, but it is believed to be relatively small. For the most part, the bill's provisions for selection of architectural, engineering and land surveying services are very similar to those followed in current practice.

**VERNON AKIN AND ASSOCIATES**

**CONSULTING ENGINEERS**

**P.O. BOX 1081**

**JUNEAU, ALASKA 99802**

**PHONE (907) 586-6622**

March 13, 1985

Dear Legislator and Friend:

The selection of professional services for architects and engineers, for many years, has been done based upon the qualifications of the professional instead of on the lowest price for design. In the past there have been trends to base the selection upon cost only, but it was found by sad experience that the system was not satisfactory. It takes only a small amount of analysis to see why the selection based primarily on cost does not produce satisfactory results. The owner is the party who suffers when the finished product does not perform as intended or desired. The work of a designer of a building cannot be made analogous to the work of a contractor, as many people have tried to do. Some people have asked why a designer can not bid a job the same as a contractor does. When a contractor bids a job, he has the plans and specifications prepared by a design team, so he knows exactly what the scope of the work is and what is required. On the other hand, when an owner wants a building designed and hires an architect or engineer, all the design team has for scope is a concept of the purpose for which the building is going to be used, the monies available, and possibly the breakdown of the approximate square feet desired for each function. Before and during design, the design team confers with the owner and at that time the true scope of the work is set. Many times the full extent of the scope of the work is not fully set until well into the design phase. So at the time of bidding of services there is no way that the true extent of the scope can be enumerated. If it were, then there would be a complete set of plans and specifications required for bidding the services, which is impractical. With a negotiated contract, it leaves the design team latitude to include cost and energy saving features into the design, as well as cost saving maintenance features.

The least expensive initial-cost building is not necessarily the most economical to operate and maintain. Life cycle costing has shown that the initial cost of a building is about 4 to 5 percent of the total cost of the building for the life of the building. So it is a fallacy to try to save a few dollars on the initial cost of a building if the operating and maintenance costs are going to be high. If the design of a building is going to be based upon cost only for the design, this eliminates the chance of getting a good design. All the owner is getting by accepting the low bidder is a minimum design. And a minimum design will result in a minimum quality building, without concern for any energy saving features, esthetic features, quality of materials, or effective operating and maintenance features that will prolong the life of the building and equipment.

Some proponents of the bidding feature say that it will result in lower design costs. They are not evaluating correctly. Time costs money. The more time expended the more the cost. The only way lower design costs can be obtained is by spending less time on the design. But who suffers for this less time? It is not the design team, because their time is calculated and allotted at the time of the bidding. So it is the owner who gets exactly for what he is paying. There is no such thing as a "free lunch".

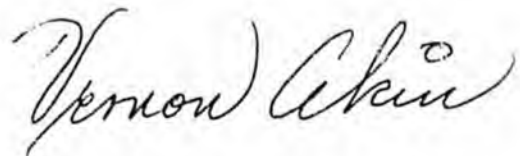
The proponents of the bidding arrangement say there is no competition. This is not correct. Under the present system, which has proven over the many decades to be the best method for the results desired, there is competition. The difference is that qualifications are the primary basis for selection--not cost for design. Under the present system used by the State of Alaska, the project is advertised for letters of interest. Any design team can put in their letter of interest. The applicants are then scored on a basis of 100 points related to the project. They are scored by the owner, which could consist of several agencies and departments of the state. From the scoring, the highest scoring team is interviewed first to see if there is an agreement on scope of the work, procedure, timing, and finally cost proposal. If there is no agreement, then negotiations are cancelled and the second highest scoring team is interviewed. This extends down the line of applicants until an agreement is reached. So the first team knows that their cost proposal must be acceptable to the owner or they are permanently out. There is no chance for competitive "price cutting" by the applicants. As stated previously, price cutting is to the detriment of the owner and not the designer.

Again, this bidding process on design work has been tried previously, and found that it was not successful. It resulted in poorly designed buildings lacking coordination in design, and the owner was the loser. There are all quality of designers from excellent to very poor, as in all fields of endeavor. If the selection is based upon qualifications, the owner will get the better designer. If the selection is based upon cost only, he will get the poor designer, because less time and coordination will be spent on the design. Details will be incomplete or totally missing which will cost more change orders and more time spent during construction. Remember that a design team in the selection process has reached an amicable agreement with the owner on cost to furnish the services the designer deems necessary for a satisfactory design, so the design team is working for the owner to see that the owner gets full value for his money. During construction the design team is the owner's representative, to protect the owner's interests. If the designer has to bid competitively for the job, the good design team who wants to put the extra time into the job to protect the owner's interests will not be the low bidder. So the owner is going to be the ultimate loser.

Letter, HB 278

Some municipal governments oppose this bill because they are under the mistaken impression that they are going to get more for their design money. They are going to get less, both in quality of design and quality of finished building, and they will have a monument consisting of the finished building for the lifetime of the building to remind them of their decision. This bill is an offshoot of the federal Brooks Act of 1972 which requires selection of architects and engineers "on demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices". As of 1983 twenty one states have adopted this policy with similar legislation. I strongly recommend that you do your utmost to get this bill out of committee with a vote favorable for passage. We need this legislation in Alaska to insure that we will not be saddled with buildings of minimum design and maximum operating and maintenance costs.

Cordially

A handwritten signature in cursive script that reads "Vernon Akin". The signature is written in dark ink and is positioned to the right of the typed name.

Vernon Akin

ck w DOT  
on their procedures  
1/10/77

HB 278-(and SB 204) A BRIEF ANALYSIS

This bill would empower state agencies to award contracts to architectural, engineering, and land surveying firms based on the following:

- 1.) Qualifications of the firm.
- 2.) The merits of their proposal.

Price would be secondary or tertiary in importance.

After deciding on the most qualified firm for the work, the agency would enter into negotiations to establish the most fair and equitable price for the work.

If not successful in negotiations, the state agency will go to the next highest ranking firm, and attempt to do the same.

ck on public works 7/7

Sec. (c) would allow a state agency to award a contract at its discretion if a "situation of public necessity exists". I don't know what the hell that means. It looks like a way to award contracts on the "buddy system", without any competition. I think that the GOVERNOR should be the only one to determine what a public necessity is, or else it should be re-worded to define "public necessity" (as in emergency). (Let's face it, ALL public works projects are a "necessity" by definition...)

The agency deciding on the "most qualified firm" must also be watched carefully when they write the regulations to implement this. It seems to me that the door could be left open to allow for the "buddy system" here, too.

The Senate version of the bill, SB 204, is basically the same, but broadens the definition of State Agency to allow municipalities using State funds (which is all of 'em) on their projects to do the same thing. I think this is good.

All in all, I think the intent of the legislation is good. Being in this business, I think that I would rather compete on this basis for jobs than on price alone. However, I think the people (and other competitors) could get screwed if the concerns I mentioned are not addressed and tightened up in the legislation.

I hope this gets you prepared for your meeting w/Sharon Macklin & Co.

HB 278 File Contents

March 20, 1985

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- R. Poppe, Committee Staff
- 3) Alaska Statutes AS 36.98
- 4) Fiscal Note -- Dept. of Transportation
- 5) Position Statement -- Dept. of Transportation
- 6) Supplemental Materials supplied by a representative of the Alaska Chapter of American Institute of Architects
  - a) Report of the federal GSA Special Study Committee on the Selection of Architects and Engineers (June, 1974)
  - b) Article: "Why not contract for architectural services on a competitive-bid basis?"
  - c) Summary of State Laws:  
Public Law 92-582, October 27, 1972  
Memo: Newsletter of the AIA, Jan. 23, 1985  
on Qualifications or Price: How Should States Select A/Es for Public Projects?
- 7) Copy of SB 204 by Sturgelewski

M E M O R A N D U M

To: All Members, House Labor and Commerce Committee

From: Roger Poppe, Committee Staff

Date: March 20, 1985

Subject: Overview, HB 278

---

On March 20, 1985, the House Labor and Commerce Committee met in Room 102 of the Capitol Bldg. on HB 278, "An Act relating to contracts for architectural, engineering, and land surveying services."

There were bills in both the House and the Senate last year on this issue. HB 211 by Furnace, et alii which had several CSs, but passed the House but died in the Senate Labor and Commerce Committee. This year, there is companion legislation on this bill in SB 204, by Sturgelewski and Rodey, which differs from HB 278 primarily in that it includes municipalities and other political subdivisions of the state who use state funds to be included in the bill.

The basic question posed by this bill is whether it is more cost-effective to hire architects and engineers on state projects on the basis of qualifications or on the basis of their fees? The lowest bidder in such situations can lead to shoddy and ugly planning and construction which will have to go through a constant repair and maintenance process.

If hiring is on the basis of their qualifications, we should consider the question of whether this will mean more contracts going to out-of-state people and firms, or for that matter, even firms in other countries. Or, it could lead to a series of sweetheart contracts with a few selected in-state firms. One question is how many available local architects are there in Alaska? On the other side of the question, the whole thing could be negated depending on how one interprets lines 25 and 26, which say that these negotiations to hire the most qualified people does not apply in a situation of public necessity. One could define this to include every single state contract.

Your file shows that roughly 2/3 of the states have some kind of statute dealing with this issue.

INTRODUCTION OF BILLS (House)

Appropriation  
(special)  
(Ketchikan  
pioneers'  
home)      HOUSE BILL NO. 275, by Reps. Sund and Taylor. Makes a special appropriation in the amount of \$3,600,000 to the Dept. of Administration for construction of a new wing to the Ketchikan Pioneers' Home. Appropriation is for a capital project and does not lapse. Takes effect July 1, 1985.

Introduced March 8 and referred to State Affairs, Finance.

Home Services  
Payments  
(sliding fee)      HOUSE BILL NO. 276, by Reps. M. M. Miller and Duncan. Would authorize the Dept. of Health & Social Services to establish a sliding fee schedule for payment by recipients of homemaker services, home health aide services, and home health nursing services. Fees would be set in accordance with the person's ability to pay. Provides Act takes effect immediately.

Introduced March 8 and referred to Health, Education & Social Services, Finance.

Bank  
Investments      HOUSE BILL NO. 277, by the Judiciary Committee by Request. See Senate Bill 116, page 169, identical.

Introduced March 8 and referred to the House Special Committee on State Loans, Finance.

Architectural,  
Engineering,  
& Land Survey  
Contracts      HOUSE BILL NO. 278, by Reps. Koponen, Sund, Szymanski and Collins. See Senate Bill 204, page 351, nearly identical. The House version does not include the definition of "state agency" as does the Senate version.

Introduced March 8 and referred to Labor & Commerce, Judiciary and Finance.

INTRODUCTION OF RESOLUTIONS (House)

Merchant  
Marine Act of  
1920  
(repealing)      HOUSE JOINT RESOLUTION NO. 21, by Rep. Marrou. Urges Congress to repeal the Merchant Marine Act of 192 (the Jones Act). Identical to SJR 11, see page 224.

Introduced March 6 and referred to Transportation.

Appropriation  
Reserve Fund      HOUSE JOINT RESOLUTION NO. 22, by Reps. M. W. Miller, Pearce, Ringstad, Shultz and Thompson. The resolution does the following:

--Section 1 rewrites Article IX, section 16 of the Alaska Constitution, "Finance and Taxation. Appropriation Limit." to establish a limit on appropriations that is the lesser of two amounts ". . . appropriations from the treasury during a fiscal year may not exceed the lesser of the amount appropriated in the year this section takes effect adjusted for the cumulative inflation and population growth or decline as defined by law or 95 percent of the unrestricted revenue of the state for the previous calendar year. . . ."

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 201 (cont'd)

The fund would consist of private contributions. The state would be authorized, but not required, to contribute.

The Dept. of Revenue must inform all applicants for permanent fund dividends about the fund so that they may pledge their dividend if they so desire. Does not provide for an effective date.

Introduced February 28 and referred to Resources and Finance.

Appropriation  
(special)  
(Eagle Ri  
Hiland Bridge)

SENATE BILL NO. 202, by Senators Kelly and Halford. Appropriates \$23,555,100 to the Dept. of Transportation and Public Facilities for right-of-way acquisition, engineering, and construction of the Eagle River Hiland Bridge. Provides that appropriation is for a capital project and does not lapse. Effective July 1, 1985.

Introduced February 28 and referred to Transportation and Finance.

Capital  
Projects  
Commission

SENATE BILL NO. 203, by Senator Josephson. Creates a 16-member "Capital Projects Advisory Commission" to conduct state-wide public hearings to ascertain public opinion on the need for capital projects. The Commission would be directed to report its findings and recommendations for capital projects to the governor and legislature no later than January 30 of each year.

Membership would include: four employees or officials of the executive branch appointed by the governor; two members of the House; two members of the Senate; and eight public members who are not state employees. Four of the public members would be appointed by the governor, and the President of the Senate and the Speaker of the House would jointly select the remaining four.

Does not provide for an effective date (becomes law 90 days after signed).

Introduced March 1 and referred to State Affairs and Finance.

Architectural,  
Engineering,  
& Land Survey  
Contracts

SENATE BILL NO. 204, by Senators Sturgulewski and Rodey. Would require state agencies that enter into contracts for architectural, engineering or land surveying services to negotiate contracts only with "the most qualified and suitable firm or person of demonstrated competence."

Compensation under the contract must be "fair and reasonable," as determined by the state agency. If negotiations with the most qualified and suitable firm or person are not successful, the agency "shall negotiate a contract with other qualified persons or firms of demonstrated competence, in order of public ranking."

Does not apply to contracts awarded in a situation of public necessity "if the person responsible for execution of the contract on behalf of the state agency certifies in writing that a situation of public necessity exists." Applies to requests for bids or proposals for services issued after the effective date of the bill.

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 204 (cont'd)

Effective immediately.

Introduced March 1 and referred to Community & Regional Affairs and Finance.

Community  
Colleges  
(bond issue)

SENATE BILL NO. 205, by Senator Kerrettula. Calls for the issuance of \$31,880,000 in state general obligation bonds to finance community college land acquisition, design, and construction, as follows:

--Anchorage CC - lab/admin. building	\$18,000,000
--Northwest CC - land acquisition	400,000
--Tanana Valley CC - phase II design	2,000,000
--Univ. of AK, Juneau - site development and access roads	600,000
--Prince Wm. Sound CC - admin./classroom bldg.	4,600,000
--Mat-Su CC - classrooms	3,500,000
--U of A Mat-Su agric. experiment station research lab	980,000
--Kenai CC - Soldotna Campus, phase III classrooms	1,800,000

Provides that question be placed on the next statewide general election ballot. Effective immediately.

Introduced March 1 and referred to HESS and Finance.

State  
Purchases  
(timely pmt.  
of)

SENATE BILL NO. 206, by Senators DeVries, Cogbill and Paul Fischer. Identical to HB 30 by Rep. Shultz. See page 45.

Introduced March 1 and referred to State Affairs and Finance.

Public  
Employees  
(cost-of-  
living  
differentials)

SENATE BILL NO. 207, by the Finance Committee. Amends laws governing public employees to enact restrictions on use of area differentials in calculating overtime or other salary adjustments.

Sec. 1 amends AS 23.40.210 relating to negotiations between labor organizations and public employers. Adds: "The cost-of-living differential or other geographic cost-of-living adjustment may not be considered part of the basic salary for purposes of calculating overtime compensation or other salary adjustments."

Sec. 2 amends AS 39.27.020 (Pay Plan for State Employees; Pay step differentials by election district and in other states) by adding: "If an employee's basic annual salary is no more than \$30,000 the

the prospective client to compare services on the basis of price prior selection, and it presumes that the contract will go to the qualified firm submitting the lowest price.<sup>1</sup> Of the 29 states which have statutes on selection, 21 are similar to the Brooks bill and the Model Code; twelve specifically exempt A/E selection from competitive bidding; two prohibit bidding for A/E services by law; one permits agencies to request price proposals at their discretion (Georgia); and one requires price proposals (Maryland). Table 1 summarizes these state statutes.

TABLE 1

SUMMARY OF STATE LAWS			
<u>States which prohibit competitive bidding for A/E services in Law:</u>			
Tennessee		Texas	
<u>States which exempt A/E services from general bidding requirements:</u>			
California		New Jersey	
District of Columbia		New York - by state	
Hawaii		comptroller's opinion 1/2	
Illinois		Ohio	
Kentucky		Oklahoma	
Mississippi-by attorney		Pennsylvania	
general's ruling		Wyoming	
<u>States calling for selection based on qualification:</u>			
(with procedure requiring ranking of firms, negotiation on scope of project and fee with the top firm. If no contract can be reached, negotiations are terminated and taken up with the second ranked firm, etc.)			
California	(1973)	Nebraska	(1978)
Connecticut	(1979)	New Hampshire	(1973)
Colorado	(1979)	New York State	(1980)
Delaware	(1976)	Oklahoma	(1974)
Florida	(1973)	Pennsylvania-building	(1975)
Kansas As and Es	(1977)	construction offices	
Kentucky	(1978)	South Carolina	(1974)
Louisiana	(1975)	Texas	(1971)
Maine	(1979)	Utah	(1980)
Massachusetts	(1975)	Virginia	(1980)
Minnesota	(1975)	Washington	(1981)

<sup>1</sup>"Report of the GSA Special Study Committee on the Selection of Architects and Engineers," Part IV, Appendix F, p. 1 (June 1974).

# Appendix A

## PUBLIC LAW 92-582; 92ND CONGRESS, H. R. 12807; OCTOBER 27, 1972

### AN ACT

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 11 et seq.) is amended by adding at the end thereof the following new title:

#### "TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

##### "Definitions

Sec. 901. As used in this title—

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term 'architectural and engineering services' includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform."

##### "Policy

Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services involved, and at fair and reasonable prices.

*Requests for data on architectural and engineering services*

"Sec. 903. In the procurement of architectural and engineering services the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each

proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

*"Negotiation of contracts for architectural and engineering services*

"Sec. 904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."

Approved October 27, 1972.

Architects and engineers: Federal selection policy, establishment 63 Stat. 377, 82 Stat. 1104, 786 Stat. 1278, 786 Stat. 1279.

#### LEGISLATIVE HISTORY

HOUSE REPORT No. 92-1188 (Comm. on Government Operations)

SENATE REPORT No. 92-1219 (Comm. on Government Operations)

CONGRESSIONAL RECORD Vol. 118 (1972) July 19, 1972, and passed House Oct. 14, 1972, passed Senate

# Memo

Newsletter of The American Institute of Architects #682 January 23, 1985

## Convention '85 Will Show How To Integrate Design Trends Into 'Value Architecture'

How can architects apply the newest design techniques to create quality facilities for the elderly, energy-efficient "smart" new buildings, space-efficient interiors and other projects that produce profits for their clients and themselves?

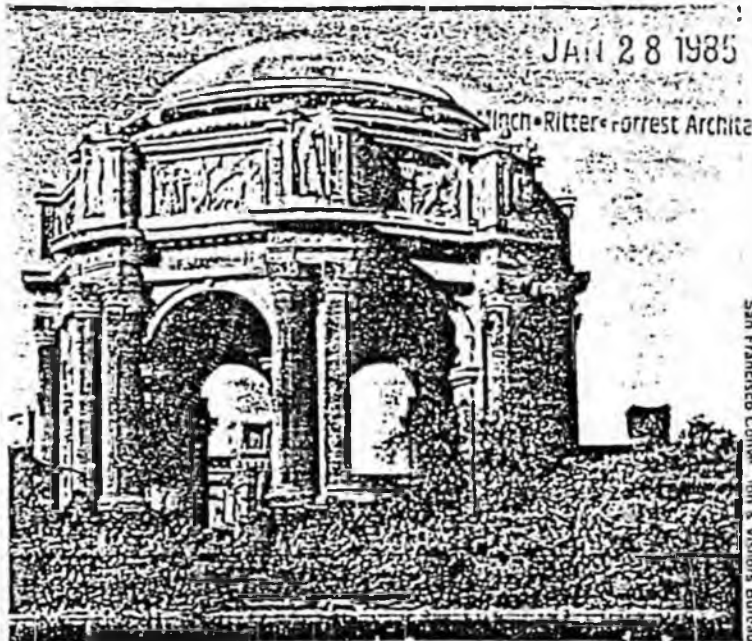
The 1985 AIA National Convention in San Francisco, June 9-12, will feature 10 information-packed hours of special design program to help architects integrate new techniques into the various facets of "value architecture."

The "Value Architecture" convention's four professional interest programs, covering design for aging, research and design, interior design and the 1985 AIA design awards, will complement a wide range of professional development seminars, small-group consultations and theme programs. (See Memos #680 and #681.)

The workshop on "Design for Aging" will review the special needs, information sources and design guidelines available for all environments—from independent living communities to health, recreational, cultural and extended-nursing-care facilities—for the fastest growing segment of America's population.

This comprehensive program will be led by former AIA Board member Samuel A. (Pete) Anderson III of Richmond and Martin H. Cohen, FAIA, New York City.

Another in-depth program will present highlights of the Institute's "Research and Design '85"



San Francisco's Palace of Fine Arts (1915) by Bernard Maybeck

conference to be held this March in Los Angeles, where architects are expected to explore state-of-the-art findings from architectural research and technology.

This workshop will emphasize the application of new design and management tools—especially computers—to energy-conscious design, life safety and codes, building redesign, design of specialized facilities and environmental needs.

Moderated by Earle W. Kennett of the AIA Foundation's research department, the research and design program will feature selected papers from the March conference.

Interior design's value as a project-enhancing service to clients will be addressed in the "Designing Value Interiors" workshop. Participants will examine how interior design has emerged as one of the fastest-growing dimensions of the design profession and how it can become one of the most profitable services of architecture firms.

The interior design workshop will be led by Michael Brill, president of the Buffalo Organization for Social and Technological Innovation.

The final design program will include a series of panel discussions of AIA Honor Award-winning projects for 1985—from perspectives of both the architect and the client. Panelists will discuss how quality design adds "value"—monetary and otherwise—to an architectural project.

Essex (Conn.) architect Mark Simon will moderate these discussions.

"This year's design programs offer a unique and valuable opportunity for architects to learn more about design excellence and the tools for creating it," explained 1985 convention chairman Joseph Monticciolo, FAIA.

## Qualifications Or Price: How Should States Select A/Es for Public Projects?

Which is more cost-effective for state governments: Selecting architects and engineers primarily on the basis of qualifications or on the basis of their fees?

This question is the focus of a recent AIA study comparing the experience of Maryland, which selects architects and engineers on the basis of price and other qualifications, and Florida, which emphasizes technical qualifications in the selection system.

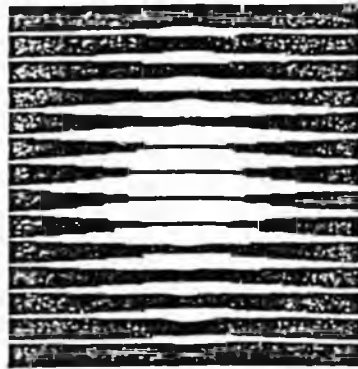
The AIA-supported "Brooks Act" approach to granting public building contracts, specifying that A/Es be selected on their qualifications subject to negotiation of fair and reasonable compensation, is used by most localities; the federal government and the majority of state governments, including Florida.

Maryland, however, has advocated its selection process as more cost-effective than the traditional "Brooks Act" approach, thus prompting the AIA to include Maryland in the study.

Florida was selected for comparison because, until price enters the process, its A/E selection is similar to Maryland's.

The study concludes that Maryland's A/E selection process "is significantly more time-consuming and expensive than Florida's," according to AIA Board member David E. Lawson, chairman of the AIA A/E Selection Consulting Group.

In Maryland, total costs of the A/E portion of the capital construction process average 13 percent of estimated construction costs; but in Florida they average only 6.8 percent. While A/E fees



are lower in Maryland than in Florida, "the added costs of the Maryland process far outweigh the savings in A/E fees," reports the study.

These added costs are in part the result of a larger administrative staff and budget necessary for preparing detailed programs on which architects and engineers can submit price proposals. These program descriptions also take additional preparation and review time, resulting in costly delays.

While Maryland requires the consideration of both price and technical competence when awarding contracts, the study finds that price is becoming the dominant factor in the system.

Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83 percent) went to the firms with the lowest price proposals.

Although both state governments are pleased with their A/E selection procedures and the quality of the buildings that result, A/E's in Maryland are resentful of its system.

"Most A/E's who design state projects in Maryland dislike the system, which they feel rewards them inadequately," reports the study.

The Maryland system, which requires competing firms to submit elaborate technical proposals accompanied by fixed prices, results in extraordinary costs to firms that compete but are not awarded contracts. These costs are eventually passed on to consumers of A/E services, according to the study.

Contact: Nancy Somerville, AIA government affairs, (202) 626-7356

## New AIA/SC Specifications For High-Tech Buildings Can Ease Design Problems

To help architects adapt to rapidly changing construction technology, the AIA Service Corporation is expanding its MASTER-SPEC system by developing specifications for a new generation of highly automated buildings.

Specifications for these so-called "intelligent" buildings are designed to alleviate problems for design professionals who have limited experience working with high-technology construction systems.

Entering the marketplace in the wake of the AT&T divestiture and the explosion of computer technology, "intelligent" systems use a network of sensors to determine a building's environment, and computers and microcomputers to adjust building controls to ever-changing conditions.

MASTERSPEC will now emphasize transmission media, telecommunications systems, lighting, building controls, signaling, energy-management systems and building automation.

Specifically, new building construction technologies for transmitting audio, video and data signals may significantly affect architectural designs.

These signals, generally transmitted through electronic cables, can now be sent with fiber optics—a much smaller medium. Use of fiber optics can dramatically alter the amount and type of space necessary to accommodate transmission equipment in new buildings.

Contact: William Aird, AIA SC, (202) 626-7371

## 6 'Energy in Architecture' Workshops Are Scheduled for Early 1985

Architects can continue to sharpen their knowledge and skills in energy-conscious design by taking advantage of the Institute's comprehensive "Energy in Architecture" workshops this year.

The schedule for this winter and spring:

—"Microcomputer-Based Energy Analysis (level 4a), Feb. 28, Moraine Valley Community College, Argonne, Ill.;

—"Energy in Design: Techniques" (level 2), Feb. 28-March 1, AIA Building, Washington, D.C.;

—"Energy-Conscious Redesign" (level 3c), March 21-22, Kona Kai Club, San Diego;

—"Energy in Design: Process" (level 3a), March 28-29, AIA Building, Washington, D.C.;

—"Microcomputer" (4a), April 15, San Diego;

—"Redesign" (3c), April 25-26, AIA Building, Washington, D.C.

Registration fees will remain the same for AIA members in 1985 but will increase for non-members.

Contact: Brenda Henderson, AIA professional development, (202) 626-7353

## Design Firm Management To Be Examined at D.C. Conference March 13-15

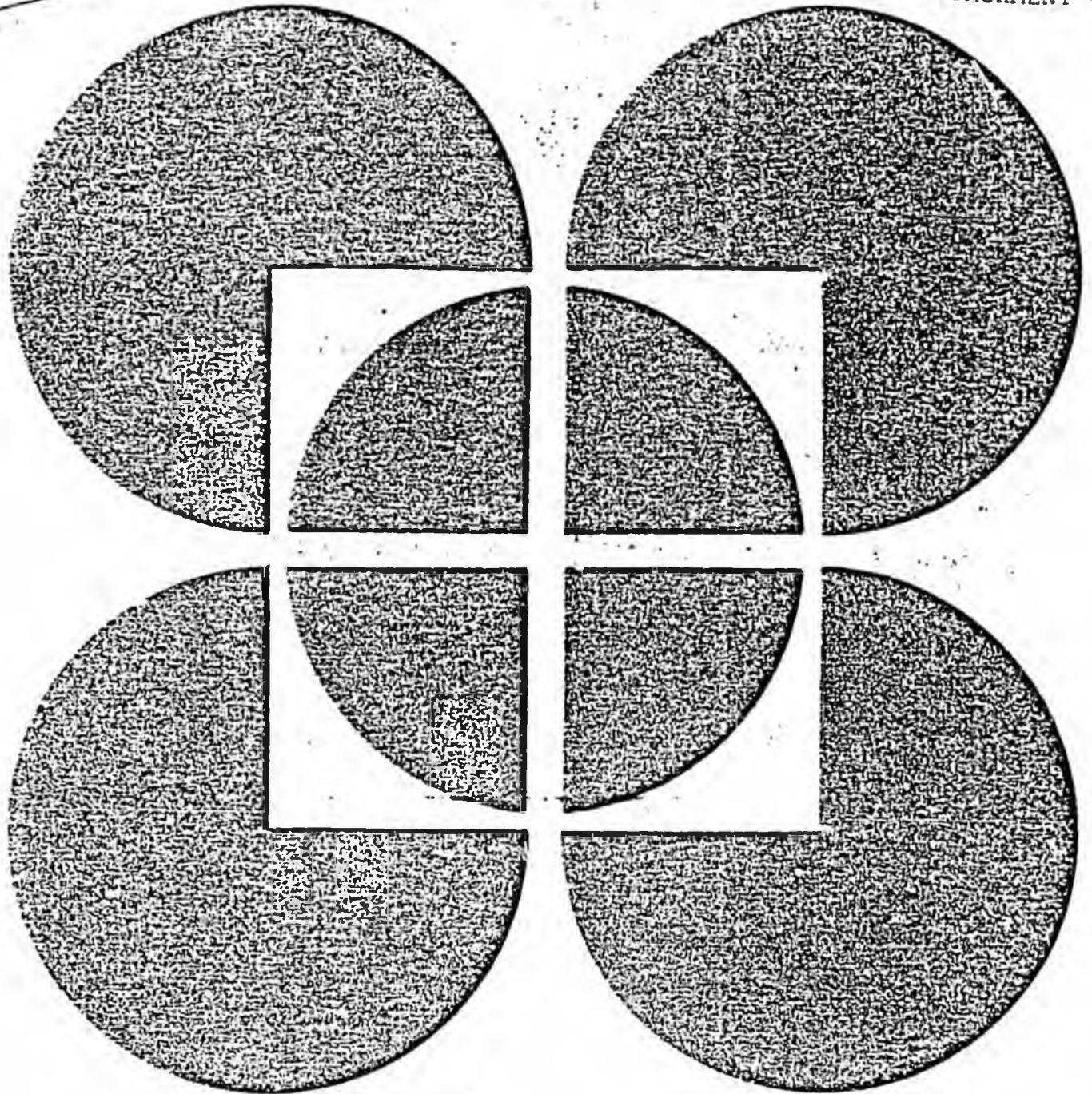
Management techniques and specifying strategies to prepare design professionals for 21st century challenges will be explored at the first Consulting Engineers Exposition and Management Conference, March 13-15 at the Washington (D.C.) Convention Center.

The comprehensive conference, cosponsored by ACEC and Consulting Engineer magazine, will identify new markets for design firms and examine how firms should be structured to tap these markets.

More than 2,500 design professionals from across the nation are expected to attend the conference, which will feature 60 management sessions, over 75 technical seminars and an extensive exposition showcasing companies that offer products and services for design professionals.

Carrying the theme "On Track to the 21st Century . . . Trends, Traps and Targets," the three-day conference will offer a four-track program with seminars on management development, vendor/specifier relations, trends in engineering practice and methodology for internal practice.

General session speakers will include Marvin Catron, the futurist who addressed the 1984 AIA National Convention; Lee Iacocca, chairman of Chrysler's board; Paul Goldberger, New York Times architecture critic; Abel Wolman, educator and author of *The Livable City*, and Samuel C. Florman, a construction company executive. Contact: Linda Oswald, Slack Inc., (609) 848-2147.



REPORT OF THE

GSA SPECIAL STUDY COMMITTEE ON THE  
SELECTION OF ARCHITECTS & ENGINEERS

JUNE 1974

## BACKGROUND

On October 10, 1973, Arthur F. Sampson, the Administrator of the General Services Administration, announced his intention to appoint a "Special Study Committee to scrutinize the architect-engineer selection process of the agency."<sup>1</sup> He made it clear that his decision was not prompted by a belief that the GSA system was defective. Rather, he wanted to confirm his opinion that the basic system was sound and, in the process, receive any suggestions for improvement.<sup>2</sup>

The Administrator convened a joint meeting of the GSA National Public Advisory Panel on Architectural and Engineering Services and the GSA Public Advisory Council on October 19, 1973 and requested their advice regarding the scope, structure and membership of the Special Study Committee.

The Study Committee first met with Mr. Sampson on December 10, 1973. Members had been chosen from the architectural, engineering and legal professions, private industry, government, the academic community, and the press. Gerald D. Hines, a developer/builder from Houston, was appointed Chairman. The Committee was asked to conduct an "independent and comprehensive study of GSA's existing procedures", to make whatever recommendations for improvements deemed necessary, and to report to the Administrator by June, 1974.<sup>3</sup>

In order to carry out its assignment, the Special Study Committee focused on the GSA procedure rather than specific contract awards.<sup>4</sup> The Chairman appointed several subcommittees and asked them to undertake the following:

## BACKGROUND (con't)

1. Collect and analyze Federal statutes, regulations and instructions governing the award of A-E contracts. Document the authority for GSA's A-E selection process. Identify and evaluate differences between GSA procedures and those of other agencies.
2. Collect and analyze the A-E selection procedures of states and foreign governments.
3. Collect and analyze A-E selection policies of a representative number of quasi-governmental authorities, major corporations and private entrepreneurs.
4. Collect and analyze studies of A-E procurement made by the Congress, the Commission on Government Procurement, Federal agencies, local and state governments and professional societies.
5. Collect and analyze information that describes and defines competitive bidding as applied to A-E procurement. Determine whether competitive bidding would improve the GSA process.
6. Assess the public image of GSA's A-E selection process.

In carrying out their assignments, the Subcommittees and/or staff prepared a statistical analysis of GSA projects awarded during 1970-1973,<sup>5</sup> conducted comprehensive research in their areas of concern, held public hearings,<sup>6</sup>

## BACKGROUND (con't)

conducted interviews,<sup>7</sup> utilized questionnaires<sup>8</sup> and attended a round-table discussion with knowledgeable individuals.<sup>9</sup> Extensive public notice was given to all elements of the Committee's work to encourage participation by all interested parties. In addition, Committee members and staff attended Advisory Panel and Evaluation Board meetings in order to observe the selection process in operation.<sup>10</sup>

The findings, conclusions and recommendations that follow relate directly to the Administrator's study request and are documented in the subcommittee reports. In addition, the subcommittee and related reports contain other information and suggestions concerning A-E procurement. Each of these reports is an integral part of the Committee's work and must be read to obtain a clear understanding of those recommendations adopted by the full Committee.

In developing recommendations to improve the GSA process for the selection of A-Es, Subcommittees were instructed to measure any recommendation against the following criteria:

- Will it minimize or eliminate the opportunity for unethical or illegal practices?
- Does it recognize the economics of Federal construction<sup>11</sup> and the necessity of safeguards built into the public construction process?
- Does it improve the design and functional quality of Federal construction?

### Feasibility of Competitive Bidding

Based on testimony presented at a public hearing, interviews with key individuals on both sides of the issue and a review of available opinion on this subject, the Committee found that price is one of the factors in awarding an A-E contract by both government agencies and private entrepreneurs. Those who procure A-E services seem to be sophisticated buyers who, for the most part, engage in serious price discussions after selecting the firm most qualified to perform the particular project. Price bidding was found to be a factor in the selection process only in rare instances when the work was of a quasi-professional nature and capable of accurate and complete specification in advance. <sup>18</sup>

The data and opinion offered favored the negotiated procurement process followed by the General Services Administration. No facts were presented to suggest that this method led to unsatisfactory results or higher A-E fees. Those testifying in favor of price competition argued that price should be a factor only when the scope of services was "adequately defined" and when firms were "equal" in ability.<sup>19</sup> Those opposed to price competition testified that the scope of services could not often be defined in advance and that purchasing professional services by low bid might create an adversary relationship between the client and low bidder which could be counterproductive to ultimate life-cycle cost.<sup>20</sup>

## CONCLUSIONS

### General

The Study Committee believes that the basic concept of GSA's A-E selection process is a good one. There is a great deal of interest in and competition for GSA work among the design professionals. Well qualified architects and engineers are selected for GSA projects. Firms without previous Government experience have a fair opportunity to obtain GSA contracts.<sup>25</sup>

The Committee is of the opinion that several modifications in GSA's procedures should be made which would improve the selection process consistent with the public interest. These improvements are particularly necessary in light of the need to maintain public confidence in the A-E procurement process.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

Page 1 of 1

**REQUEST**

Bill/Resolution No.: HB 278  
 Title: Contracts for Architects,  
 Engineers, Surveyors  
 Sponsor: Koponen, Sund, et al.  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: ALL  
 Program Category Affected: All  
ALL  
 BRU, Program or Subprogram(s) Affected:  
ALL THOSE CONTRACTING FOR ARCHITECTS,  
 ENGINEERS AND SURVEYORS

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

No direct financial impact on the Department of Administration. It is difficult to calculate the increased cost of contracts for the services of architects, engineers and surveyors when price is removed from consideration in the award of their contracts but there will be a definite premium paid without price competition.

Prepared By: Robert J. Link *Robert J. Link*  
 Division: General Services & Supply

Phone: 465-2250  
 Date: March 7, 1985

Approved by Commissioner: Lisa Rudd *Lisa Rudd*  
 Agency: Department of Administration

Date: 3/18/85

**Distribution (by Agency preparing fiscal note):**

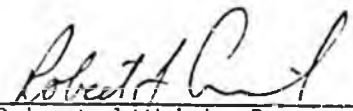
Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Position Paper  
HB 278

The Department of Administration is opposed to this bill.

This legislation would require the State and political subdivisions to award contracts for architectural, engineering and surveying services in compliance with AS 36.98.010(3) and 36.98.040, except that price could not be considered as an award factor in the request for proposals. This effectively creates a separate class of Professional Services contractors.

Price is often a significant factor, among many, in determination of lowest responsible bidder cost. Without price constraints costs would likely rise as the criteria for selection would be increasingly subjective.

 A  
\_\_\_\_\_  
Robert J. Link, Director  
Division of General Services & Supply  
Department of Administration

3/18/85  
Date

  
\_\_\_\_\_  
Commissioner Lisa Rudd  
Department of Administration

3/18/85  
Date

## Why not contract for architectural services on a competitive-bid basis?

Agency representatives who are experienced in the procurement of commodities are used to taking competitive bids from vendors, selecting contractors and awarding contracts on the basis of price. They may wonder why the bidding process is seldom used to procure professional design services.

There are good reasons why the federal government, and many states, have formalized their A/E procurement procedures with laws that specifically exclude A/E procurement from competitive bidding requirements.

Public-sector building projects involve public health and safety considerations. The agency that builds a facility is responsible to the taxpayers for obtaining the best project possible. To insure that the public interest is being properly served, the designers selected should be talented in both design and management.

The successful purchase of goods or services on a competitive-bid basis depends on the ability to provide the would-be supplier with a very complete set of specifications as to what is required.

At the start of an architectural project, the exact nature and scope of services can rarely be defined, since much depends on the type of project, the capabilities within the agency itself, and how much groundwork has already been done.

Also, professional design services involve many intangibles such as technical knowledge, esthetic judgment and decision-making skills that are difficult to compare on an "apples and apples" basis.

The American Bar Association (ABA), in developing a model procurement code for state and local governments,<sup>4</sup> recognized the unique character of professional design services. Article 5 of the code deals specifically with procurement of construction, architect-engineer and land surveying services. In a commentary on Article 5, the ABA stated, "The principal reasons supporting this selection procedure (i.e., selection based on qualifications and negotiation rather than on low bid) . . . are the lack of a definitive scope of work and the importance of selecting the best qualified firm."

One purpose for competitively bidding goods and services is to keep the selection process free from political influences. But bidding isn't the only way to avoid political problems: Alternative procedures such as open records and the public announcement of projects can effectively keep the selection process out of the political arena, while still obtaining the best available design talent.

Procurement of design services on the basis of their costs can also be extremely shortsighted. Most agencies have begun to calculate the cost of their physical facilities on a life-cycle basis; that is, initial construction cost plus operating cost over the building's anticipated useful life.

A recent article in Dun's Review calculates the initial cost of a building with a 40-year life as one-seventh of its life-cycle cost, with the remaining six-sevenths representing maintenance and operation costs.

With professional fees that come to only a small percentage of construction cost, it is easy to see that they represent a much smaller proportion of life-cycle cost. Yet a particular type of expertise on the part of the architect—in energy-efficient design, for example—can have a dramatic effect on maintenance and operating costs, year after year.

Clients should also consider that the bidding process is time consuming, and that time spent in preparing bidding documents, holding prebid conferences, etc., can be extremely costly, given the constant escalation in material and labor costs characteristic of an inflationary economy.

Architects do not oppose competition. In fact, the architectural profession is extremely competitive, and competition is a healthy and desirable factor for architects in marketing their services. But they realize that to serve the needs of their clients and the users of the buildings they design, they must compete on the basis of their skills, experience and ability to perform the services required—not on the illusory "economy" that a low-bid may seem to provide.

<sup>1</sup>Appendix A contains the text of Public Law 92-582, the Architect/Engineer Selection Act passed by the U.S. Congress in 1972. Representative state laws, in effect in California and Minnesota, are set out in Appendix B.

<sup>2</sup>Copies of SF 254 and 255 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 or calling (202) 763-3238. Cost for SF 254 25 copies/\$7.50, SF 255 20 copies/\$8. Enclose payment with order. Visa and MasterCard charges accepted.

<sup>3</sup>Appendix C contains a representative project announcement from the state of California to illustrate typical evaluation criteria and other architect-selection procedures.

<sup>4</sup>Appendix D contains the text of section 5-501 Architect-Engineer and Land Surveying Services of the American Bar Association Model Procurement Code for State and Local Governments.

Introduced: 3/1/85  
Referred: Community & Regional  
Affairs and Finance

1 IN THE SENATE

BY STURGULEWSKI AND RODEY

2

SENATE BILL NO. 204

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to contracts for architectural,  
7 engineering, and land surveying services; and provid-  
8 ing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 36.98 is amended by adding a new section to read:

11 Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING  
12 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and  
13 36.98.040, a state agency shall negotiate a contract with the most  
14 qualified and suitable firm or person of demonstrated competence for  
15 architectural, engineering, or land surveying services. The state  
16 agency shall award a contract for those services at fair and  
17 reasonable compensation as determined by the state agency, after  
18 consideration of the estimated value of the services to be rendered,  
19 and the scope, complexity, and professional nature of the services.

20 (b) If negotiations with the most qualified and suitable firm or  
21 person under (a) of this section are not successful, the state agency  
22 shall negotiate a contract with other qualified persons or firms of  
23 demonstrated competence, in order of public ranking. The state agency  
24 may reject all or part of a proposal.

25 (c) This section does not apply to contracts awarded in a situa-  
26 tion of public necessity if the person responsible for execution of  
27 the contract on behalf of the state agency certifies in writing that a  
28 situation of public necessity exists.

29 (d) In this section "state agency" has the meaning given in

1 AS 36.98.080(5), but also includes political subdivisions of the state  
2 when the political subdivision seeks architectural, engineering, or  
3 land surveying services for a project that is funded entirely or  
4 partially by state funds.

5 \* Sec. 2. This Act applies to requests for bids or proposals for archi-  
6 tectural, engineering, and land surveying services issued after the effec-  
7 tive date of this Act.

8 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.--  
9 10.070(c).

10



## The 700% Solution—A Billion Dollar Ripoff

By Paul J. Andrews

*(A commentary in the April 1980 edition of Government Executive addressed the issue of the high cost of architect-engineer services in Federal contracts. The following opinion/commentary is an update on that same issue and was submitted by a long-time (1946-1978) Federal employee who is now retired from Government service but retains a strong interest in Federal expenditures. An attorney, Mr. Andrews spent much of his Federal service in the areas of supply, contracts, claims and compliance.)*

One of the obvious ways to reduce the federal deficit is to reduce the outlay of funds for federal procurement; and an important procurement technique to reduce prices is by competitive bidding or negotiation. On August 11, 1983, President Reagan called on the heads of departments and agencies to increase price competition in the \$160 billion spent annually in federal procurement and restrict the use of noncompetitive procurement. As a part of its deficit reduction package, both houses of Congress drafted a "competition in contracting" bill (S. 338 and H.R. 5184).

The one exception, in the latter bill, to more "fair and open competition" is the procedures in the Brooks Act (sponsored by Rep. Jack Brooks and passed on October 27, 1972), which forbids price competition for architect-engineer (A/E) services. A/E fees in federal procurement total about \$5 billion annually. In the "Deficit Reduction Act of 1984" (P.L. 98-369, enacted July 18, 1984), which combined the two bills, the Federal Property Act was amended to provide (sec. 309 (b)) that—"the term 'competitive procedures' means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such terms also includes—

(1) procurement of architectural or engineering services conducted in accordance with title IX of this Act (40 U.S.C. 541 et seq) [the Brooks Act]".

On April 25, 1978, antitrust action against the A/E industry (National Society of Professional Engineers v. U.S.) culminated in the Supreme Court's decision that the traditional method of selecting A/E's without comparison of prices

was a "frontal assault on the basic policy" of the Sherman Anti-trust Act. But by then the A/E code of ethics prohibiting comparison of prices had been written into law (the Brooks Act, dated October 27, 1972).

The current NSPE Code of Ethics (as revised, July 1981) rescinds section 11(c) of its previous code, recognizing the Supreme Court decision, and permits price negotiation for A/E services. The private client may now compare prices offered by competing A/E's; but the federal government client is forbidden by the Brooks Act from making price comparisons. The new NSPE Code also notes that "Engineers and firms may individually refuse to bid for engineering services. Clients are not required to seek bids for engineering services . . . State registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect." As we shall observe later, the absence of price comparison results in a 600 to 700 per cent price spread in the cost of A/E services. In other words, the Brooks Act alone insures that A/E services which could be obtained for \$50,000, will cost the federal government as much as \$350,000.

A survey of the largest construction firms in the east revealed a definite move toward price comparison in the A/E selection process. Joe Wood of Marriott Corporation said that for the design of hotels and facilities around the world they ask for A/E design proposals with prices, then select the proposals in the lower half of the price range and negotiate with the best qualified A/E. Alan Brangman said Oliver T. Carr Co. was paying time and service rates for A/E services but found the costs so high that the project managers are now going into the market place to expand the pool of eligible A/E's and to negotiate lump sum prices with all A/E's qualified for the particular design job. Steve Hayes, Project Manager for the Washington-Baltimore area for Cabot and Forbes, who construct multi-story office buildings, said they use Skidmore, Owings and Merrill as the A/E for their largest buildings; but in suburban areas (for designs of smaller facilities) a feasibility design is developed, a pool of

qualified A/E's is selected and price is negotiated with all of them. The consensus was that price comparison for A/E services is the definite trend—in order to reduce costs of design work and continue to obtain highly qualified A/E's.

In its December 1972 report, the Commission on Government Procurement recommended price competition as a "non-dominant factor" in selections of A/E's. Congressman Brooks, in the ensuing 12 years has never sought review of the Brooks Act, although for most of these years he has been in a prime position, as Chairman of the House Government Operations Committee, to do so. He has repeatedly stated that the Act calls for "fair and reasonable" prices and if administration of A/E procurement fails to curb excessive profits, it is not his concern. Section 2753 of the recently enacted Deficit Reduction Act of 1984 finally calls for a study of all factors in the procurement with recommendations from the Office of Federal Procurement Policy (OFPP), where the survey will be conducted.

In August, 1983, the Inspector General of the Department of Transportation published an investigative report in which he reviewed 102 A/E grant-funded contracts and concluded that there had been a loss of tens of millions of dollars to the American taxpayer. Fifty three percent of the contracts were entered into without the benefit of adequate cost estimates and analyses of A/E costs and 68 percent of the contracts were not sufficiently documented to show that reasonable prices were obtained. Ten of the contracts showed a price spread of 7 to 733 percent for the same services. Frank Musica, Washington Counsel for the American Society of Civil Engineers, explained that price spreads of \$50,000 to \$300,000 (600 percent) were not unusual for A/E proposals on the same project because the federal agencies were unable to define adequately the scope of work. The anomaly in this assertion is that federal agencies also claim they cannot define adequately the scope of work for a particular project for the purpose of price comparison among the three best qualified A/E's selected. Having said that, the agency immediately enters into a contract with the best qualified A/E in which

scope of work is defined sufficiently to measure the A/E's performance.

The significance of the price spread is that so much of A/E design work is repetitive (such as rooms and other space units in a building) that prices paid in the past become the basis for estimates by the government or the client for future design projects. Prices near the top of the 500 to 700 percent spread, therefore, create a plateau estimated price for future projects. If the three best qualified A/E's are permitted to offer prices for comparison by the client, and the plateau price offered by the best qualified A/E is at the top of the 700 spread, the prices offered by the other two best qualified A/E's could introduce competition at the 300 percent and 100 percent level. The A/E industry price fixing rate schedules, of course, keep prices at the 700 level. And if over 98% of A/E contracts are awarded by the federal government to the best qualified A/E at the 700 level the inflationary trend in prices is obvious. Notwithstanding this inflationary trend, in the 12 years that the Brooks Act has been in effect, no effort has been made by the Federal Government to survey the prices for A/E services.

The absence of requirements for competitive price negotiation in the A/E selection process is the crux of the problem of excessive profits. The DOT audit found that "in 36 percent of the 102 A/E contracts reviewed, available evidence indicated that A/E firm proposals were apparently accepted without analysis or efforts to negotiate reasonable prices. It appeared that these grantees did not have either the capability or the incentive to conduct meaningful (price) negotiations with the A/E firms."

From the time the Brooks Act was enacted, price negotiation has been a charade. The A/E selected as best qualified prescribes the industry fixed price for

the services required. The federal or grantee client must accept this price or lose that A/E. The client knows if he goes to the other selected A/E's he will be offered the same industry rates on a take-it or leave-it basis. So, why lose the best qualified A/E?

Statistics bear this out. In 1979, the Department of Defense reported to a House Committee that "It is estimated by the military that less than two percent of contract negotiations are formally terminated with the top-ranked (A/E) firm and negotiations undertaken with the second-most-qualified firm, and almost non-existent when negotiations are undertaken with the third or lesser-ranked firm". In the Military Construction Program in fiscal years 1979, 1980 and 1981 the Navy and Army awarded 480 A/E contracts—474 to the best-qualified firm and 6 to the second (or 98.7 percent to the best-qualified firms). Efforts by the Corps of Engineers to test competitive pricing for A/E services were thwarted by the Department of Defense and Congressional committees on the ground that such tests were forbidden by the Brooks Act.

The Comptroller General continues to issue reports favoring a form of price-competition for A/E services but refrains from raising the subject when testifying on procurement legislation. However, in presenting the views of the Department of Justice on the OFPP draft "Proposal for a Uniform Federal Procurement System", dated February 12, 1982, Assistant Attorney General Robert A. McConnell, in his letter of February 20, 1982, stated that although Justice supported the pro-competitive policy objectives of the proposal, "... we strongly believe it to be deficient in not requiring competitive procurement of architect and engineering services." Justice recommended repeal of the Brooks Act and elimination of "the

current anticompetitive restraints upon A/E services procurement." Apparently in conformance with the Administration's pro-industry policy, the OFPP ignored the "strong" advice of Justice with respect to A/E procurement reform when it sent its final System proposal to the Congress.

The primary factors in the selection process for other professional services is the professional competence of those who will do the work and the relative merits of proposals for the end products. The fee to be charged is not a dominant factor but price comparison is required. It is this latter factor which is missing under the Brooks Act.

Professionals who perform work similar to that performed by A/E's have sought to be included under the Brooks Act. Appeals to the Comptroller General of the United States by the Association of Soil and Foundation Engineers, and by other engineering firms referenced in that opinion, to be exempt from price competition for services their members performed that were related to A/E services, were denied because the Brooks Act procedures are strictly limited to such services "when performed by A/E firms." However, the surveyors and mappers have prevailed; 97 Stat. 311 adds their services to the Brooks Act. This was accomplished by a floor amendment introduced by Senator Charles Percy to the supplemental appropriations act of 1983 (P.L. 98-63). Other professionals (real estate appraisers, lawyers and others) have sought, over the years, to get aboard the gravy train that has profited the A/E's so much.

With the support of the Brooks Act, sole source procurement of A/E services at prices fixed by the industry have lulled state and federal contracting and administrative officials into a state of euphoric disregard of all sound contracting principles. Money is poured into A/E projects with no evaluation of cost or accountability required. The rationale is that the ultimate cost of the design concept, whatever it is, will be justified in the construction to which it is applied. The logical control is to be found in some kind of price competition. The A/E lobby in Congress is betting its money against such a retreat from the status quo.

It is encouraging that the Deficit Reduction Act of 1984, in its final provision, calls for a study of procurement of professional services, including A/E services. The report on the legislation (House Report 98-861) proposes a system in which all qualified persons be encouraged to submit a competitive proposal in response to each solicitation for services "and in which the award is made to the bidder on the list who can perform the service for the lowest over-all cost." This is the light at the end of the tunnel. May this commentary contribute to the study of procurement of A/E services.

**LOW COST LARGEST SELECTION TEMPEST PRODUCTS**

All Types of TEMPEST PPL Products Sought For Display and Sale at THE TEMPEST STORE	<b>SPECIAL</b> 10MB Disk Upgrade for UNTEMPEST IBM PC's Installed \$599
<b>ITC PC AT-T</b> ALL Removable Disks <i>Designed to meet NACSIM 5100A</i>	From <b>\$ 6,990</b>
<b>ITC PC XT-T</b> <i>Accredited PPL</i>	From <b>\$ 5,358</b>
<b>TEMPEST OPTIONS</b> <i>Accredited PPL</i> • 1 or 2 IBM 320KB Diskette Drives • High Resolution Monochrome Graphics • 1 or 2 Half-Height 5MB Removable Winchester Disk • 1 or 2 Half-Height 360KB Diskette Drives • 1 10MB Floppy Drive • AST MegaPlus • Math CoProcessor • Emulation LINK-UP • Memory Expansion • RAM Up to 640K	From <b>\$ 3,990</b>
<b>ITC PC-T</b> <i>Designed to meet NACSIM 5100A</i>	From <b>\$ 4,935</b>
<b>ITC 20T Printer</b> <i>Accredited PPL</i> • High Speed/Multifunction/Letter Quality/Draw/Graphic/Typesetting • Interfaces for Wang, Delta Data, and IBM TEMPEST PCs	From <b>\$12,831</b>
<b>ITC 2T Tabletop OCR</b> <i>Accredited PPL</i>	From <b>\$12,831</b>

**GS-00K-8401S-6045**  
For Most Items

All Types of Software  
Immediate Delivery of  
Off-the-Shelf Products

**THE TEMPEST STORE**  
Owned by International Technology Corporation  
CALL: Irone Chaney at 703-893-5140

By Appointment Only  
Identification Required  
Sales by Purchase Order Only  
No Cash Walk-Ins

6861 Elm Street  
P.O. Box 1070  
McLean, VA 22101

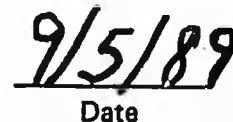


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date